





1 transacts or has transacted business in this district and throughout the United  
2 States.

3 7. Defendant Marvin Silver (“Silver”) is an officer and director of  
4 Nobetes. Individually or in concert with others, he controlled or had the authority  
5 to control the acts and practices of Nobetes, including the acts and practices  
6 alleged in this complaint. Among other responsibilities, Defendant Silver  
7 participated in product development, and the development, review, and approval of  
8 ad content and substantiation of advertising claims. His principal office or place of  
9 business is the same as that of Nobetes. Defendant Silver resides in this district  
10 and, in connection with the matters alleged herein, transacts or has transacted  
11 business in this district and throughout the United States.

12 8. Defendant Jeffrey Fleitman (“Fleitman”) is an officer and director of  
13 Nobetes. Individually or in concert with others, he controlled or had the authority  
14 to control the acts and practices of Nobetes, including the acts and practices  
15 alleged in this complaint. Among other responsibilities, Defendant Silver  
16 participated in product development, and the development, review, and approval of  
17 ad content and substantiation of advertising claims. His principal office or place of  
18 business is the same as that of Nobetes. Defendant Fleitman resides in this district  
19 and, in connection with the matters alleged herein, transacts or has transacted  
20 business in this district and throughout the United States.

## 21 **COMMERCE**

22 9. At all times material to this Complaint, Defendants have maintained a  
23 substantial course of trade in or affecting commerce, as “commerce” is defined in  
24 Section 4 of the FTC Act, 15 U.S.C. § 44.

## 25 **BACKGROUND INFORMATION ON DIABETES**

26 10. Diabetes occurs when a person’s blood glucose, also known as blood  
27 sugar, is too high. Type 1 and type 2 diabetes are the most common forms of this  
28 disease. Type 1 diabetes occurs when the immune system destroys the insulin-

1 producing beta cells in the pancreas. Insulin performs the critical job of moving  
2 glucose from the bloodstream to the body's cells. With beta cells destroyed,  
3 glucose builds up in the blood stream. In type 2 diabetes, the body does not make  
4 or use insulin well. It is caused by many factors, including genetics and lifestyle.  
5 It typically starts with insulin resistance, where the body needs higher levels of  
6 insulin to move glucose from the blood stream into the cells. Initially, the pancreas  
7 increases insulin production to meet demand; over time, however, the pancreas  
8 cannot make enough insulin, and blood glucose levels rise. As of 2015, 30.3  
9 million people in the United States (9.4 percent of the population) had diabetes.

10 11. Hyperglycemia, that is, having too much glucose in the blood, can  
11 cause long-term health problems. These include heart disease, stroke, kidney  
12 disease, eye problems, dental disease, nerve damage, and foot problems. For  
13 example, hyperglycemia can damage the blood vessels and the nerves that control  
14 the heart and blood vessels. In adults with diabetes, the most common causes of  
15 death are heart disease and stroke. Diabetes is also the leading cause of kidney  
16 disease. Hyperglycemia can damage the blood vessels in the kidneys; as a result,  
17 the kidneys cannot filter waste efficiently, and waste builds up in the body. About  
18 one in four diabetic adults has kidney disease. Hyperglycemia can also damage  
19 nerves in other parts of the body, resulting in vision problems including blindness,  
20 and adverse changes to digestion, bowel, and bladder function. Diabetes can also  
21 reduce blood flow in the feet impairing healing of sores, and sometimes requiring  
22 amputation. Many of the injuries caused by hyperglycemia develop slowly and  
23 can go undetected until problems become severe.

24 12. Blood sugar control is fundamental to diabetes management. For  
25 diabetics, the target pre-meal blood glucose range is 80 – 130 mg/dL; two hours  
26 after meals, the glucose level should be less than 180 mg/dL, as measured by a  
27 blood glucose monitor. Another important measure of blood glucose is  
28 Hemoglobin A1C ("A1C"), which reveals the average of a person's blood glucose

1 levels over the past three months, showing how well diabetes is controlled. The  
2 A1C test result is reported as a percentage. A reasonable A1C goal for many  
3 diabetic adults is less than seven percent. Studies have shown that people with  
4 diabetes can reduce the risk of long-term diabetes complications by keeping A1C  
5 levels below seven percent.

6 13. Diabetes can be treated, but it cannot be cured. Type 1 diabetics need  
7 lifelong insulin therapy to control their blood sugar; must balance insulin intake  
8 with eating and physical activity; and must continually monitor their glucose  
9 levels. Some type 2 diabetics can control their blood sugar by losing weight,  
10 making healthy food choices, and exercising. However, many type 2 diabetics also  
11 require a diabetes drug treatment, such as insulin. Type 2 diabetes is a progressive  
12 disease; over time, patients may need multiple medications to control blood sugar.

### 13 **DEFENDANTS' BUSINESS ACTIVITIES**

14 14. Defendants developed, advertised, labeled, offered for sale, sold, and  
15 distributed Nobetes, a purported diabetes treatment. Nobetes is a 2,277 mg pill  
16 containing thirty-six separate ingredients, including vitamins, minerals, and plant  
17 extracts.

18 15. Each bottle of Nobetes contains 30 tablets. Between 2015 and 2018,  
19 the price of a bottle of Nobetes ranged from \$29.95 to \$39.95, plus shipping and  
20 handling, for new customers; and from \$15.00, plus shipping and handling, to as  
21 much as \$50.60, for repeat customers. Defendants also have advertised "trial"  
22 units for \$6.95, which they state covers the cost of shipping and handling.

### 23 **DEFENDANTS' ADVERTISING AND MARKETING**

24 16. To induce consumers to purchase their products, Defendants  
25 disseminated or caused to be disseminated advertisements and promotional  
26 materials on television, radio, YouTube, [www.nobetes.com](http://www.nobetes.com) (which automatically  
27 redirects to <https://naturalnobetes.myshipify.com>), and a Facebook page, including  
28 but not limited to the attached Exhibits A through C (transcripts) and A1 through

C1 (videos). Portions of Exhibits A and B appeared on the Nobetes Facebook page between January 2015 and September 2016. Clips from Exhibits A, B, and C appeared on the Nobetes website between January 2015 and March 2017. Exhibit B appeared on DirectTV and other cable stations between February 2016 and September 2016. Exhibit C appeared on DirectTV and other cable stations between February 2017 and July 2017. Exhibit C was disseminated after the staffs of the FTC and the U.S. Food and Drug Administration sent a Warning Letter on September 15, 2016 to Mr. Silver and Side Effects Solutions Corporation d/b/a Nobetes Corporation, advising them that “it is unlawful under the FTC Act, 15 U.S.C. § 41 et seq., to advertise that a product can prevent, treat, or cure human disease unless you possess competent and reliable scientific evidence, including, when appropriate, well-controlled human clinical studies, substantiating that the claims are true at the time they are made.”

17. Defendants’ advertising and promotional materials have contained the following representations or statements, among others:

A. One-minute video

\* \* \*

ANNOUNCER: Did you know that diabetes is the leading cause of new blindness, kidney failure and 60 percent of all non-traumatic lower limb amputations? Are you waiting for one of these to occur before you take action? . . . Attack the problem now and naturally with Nobetes.

\* \* \*

KYRSTEN M.: I’m a type 1 diabetic, meaning I’m insulin-dependent.

ON SCREEN: Levels 285 [red bar falls from 285 to 115] 115

Blood sugar levels after only 1 day

Individual results will vary.

[phone number]

1 KYRSTEN M.: When I started taking Nobetes, my blood sugar levels  
2 were up to 285. After only one day of taking Nobetes, my blood sugar  
3 dropped to 115. Now, I know it seems unbelievable and, quite frankly,  
4 when I looked down at my glucometer, I was surprised at what I was seeing  
5 as well. And to anyone who's skeptical about Nobetes, I would tell you . . .  
6 [i]t works.

7 ON SCREEN: Bob C. actual customer  
8 Levels 549 [red bar falls from 549 to 84] 84  
9 Blood sugar levels  
10 Individual results will vary.  
11 [phone number]

12 BOB C.: My blood sugar was at 549 and in a short period of time,  
13 I've dropped down to 84 to 88 and a half, and I have the blood tests to prove  
14 it.

15 ON SCREEN: 2 Free Bottles

16 These statements have not been evaluated by the Food and Drug  
17 Administration. This product is not intended to diagnose, treat, cure, or  
18 prevent any disease.

19 ANNOUNCER: Get two bottles free. Just pay processing and handling.  
20 Nobetes, it could change your life forever. To order, call [phone number].

21 – Exhibits A (transcript) and A1 (video), captured  
22 6/7/2017

23 B. First thirty-minute video:

24 ANNOUNCER: Is your diabetes out of control? . . . Are your  
25 numbers ranging from 150 to 550 or more? . . . Are your blood sugar  
26 numbers dangerously high? . . . You need to try the all-natural dietary  
27 supplement called Nobetes. . . . Just listen to what other diabetics are saying.  
28

1 KRYSTEN M.: I'm a Type 1 diabetic, meaning I'm insulin-  
2 dependent. . . . When I started taking Nobetes, my blood sugar levels were  
3 up to 285. After only one day of taking Nobetes, my blood sugar dropped to  
4 115.

5 ON SCREEN: Levels 285 (gradual down arrow) 115 Blood sugar  
6 levels

7 \* \* \*

8 ON SCREEN: JD H. Type 2 Diabetic Actual Nobetes customer  
9 J.D. H.: I used to be a 240. Now it's at 161.

10 ON SCREEN: Levels 240 (gradual down arrow) 161 Blood sugar  
11 levels

12 \* \* \*

13 EDDIE J.: Nobetes took me from 280 to 130 within a week.

14 ON SCREEN: Levels 280 (gradual down arrow) 130 Blood sugar  
15 levels

16 \* \* \*

17 EDDIE J.: And I'm – I was totally impressed because I thought the  
18 only thing that would cure this situation would be some type of medication  
19 recommended by a doctor. . . .

20 \* \* \*

21 EDDIE J.: Don't get me wrong, my doctor has looked at it, and he  
22 has endorsed it 100 percent.

23 \* \* \*

24 GUADALUPE D.: I'm a Type 1 diabetic. . . . And I notice right when  
25 I took Nobetes the numbers dropped . . . my numbers were 400, 300. Then it  
26 went – it went down to 200, and now it's 125 . . .

27 \* \* \*

28 ON SCREEN: Lance T. Type 2 Diabetic

1 Actual Nobetes customer

2 LANCE T.: I'm so grateful for Nobetes . . . . my sugar levels were  
3 [sic] 227 to 85 in less than ten days.

4 ON SCREEN: Levels 227 (gradual down arrow) 85 Blood sugar  
5 levels

6 LANCE T.: At nighttime, I had tingling in my arms and dry mouth  
7 and even blurry vision. This has all gone away just by taking a pill.  
8 Nobetes is a natural product. . . . I brought it to the doctor, and he says, if it  
9 works, use it. And it works for me. I got off my other medications. . . .

10 \* \* \*

11 LORRAINE B.: It worked. The first pill I took, I could feel a  
12 difference. I went from 549 to 112 in 24 hours with Nobetes.

13 \* \* \*

14 ANNOUNCER: Give Nobetes a try and see what this miracle product  
15 can do for you. . . . Get your bottle free.

16 \* \* \*

17 ON SCREEN: Free Bottle

18 Processing & Handling

19 \$6.95

20 \* \* \*

21 ANNOUNCER: Just pay \$6.95 processing and handling. Go to  
22 nobetes.com or call [phone number] right now.

23 \* \* \*

24 TONY V.: . . . Nobetes is . . . really affordable, and it costs nothing to  
25 try it.

26 \* \* \*

27 GUADALUPE D.: Before Nobetes, I was taking insulin for 30  
28 milligrams in the morning and 30 milligrams in the afternoon. . . . So, now,

1 I'm taking insulin only in the morning, 30 milligrams.

2 \* \* \*

3 HENRY H.: I've been taking Nobetes now for about two years . . . .  
4 [F]or the first three months, I did it three pills a day, and my blood sugar  
5 went from a 9.2 down to a 6.5.

6 ON SCREEN: Levels 9 (gradual red arrow) 6.5 A1C levels

7 HENRY H.: . . . And my doctor recommended it to many of her  
8 patients, and they're having success with it.

9 \* \* \*

10 JOHN R.: . . . I was having problems. My A1Cs were running into  
11 the high 7s, and I had to do something. . . . Nothing else was working for  
12 me, and I did not want to do injections, so I tried this product. I dropped my  
13 A1C from the high 7s to the low 6s.

14 ON SCREEN: Levels 7 (gradual red arrow) 6 A1C levels

15 JOHN R.: I suggested it to a few friends. . . . The same thing  
16 happened with them. I suggested it to my mother, who was on two  
17 injections per day. . . . She started taking it. And then within a month, she  
18 was down to one injection a day.

19 \* \* \*

20 TONY V.: You know, I've tried a lot of product over the years and  
21 . . . without no prevail [sic], they didn't work like Nobetes. . . . Give it a try,  
22 eat right, exercise, and wean yourself from medication.

23 \* \* \*

24 BOB C.: . . . [T]his works. This is proven [to] work, and I've got the  
25 blood test to prove it. Nobetes did the job, and its doing the job, and it's got  
26 me under control.

27 \* \* \*

28 DAVID D.: I have my CDL license to drive a truck. . . . That's my

1 livelihood, and I need to keep my blood sugars a lot lower than, you know,  
 2 what they've been. . . . And I've been running about 260 to 300, right in that  
 3 range, and Nobetes in a very short time has got my numbers down to where  
 4 they should be, 120.

5 ON SCREEN: Levels 300 (gradual red arrow) 120 Blood sugar levels  
 6 \* \* \*

7 HENRY H.: . . . everyone that I've . . . recommended it to, it's helped  
 8 them . . . . And the doctor that I go to has recommended it to her patients,  
 9 and she's told me it's helped many of them . . . keeping their blood sugars in  
 10 control and in check.

11 \* \* \*

12 BOB C.: My blood sugar was at 549, and I counseled with my doctor,  
 13 and he told me that he was going to give me the insulin. . . I told him there's  
 14 no way that I will take insulin through an injectable needle. I said to him, I  
 15 was going to try this new supplement called Nobetes . . . . I was at 549. I'm  
 16 down to 88 and a half. I feel great. I have no side effects, no tingling, no  
 17 sharp pains. My vision's fine. And before that, I did have sharp pains in my  
 18 feet and my fingers, and now everything is fine.

19 \* \* \*

20 TONY V.: And I heard about Nobetes . . . . So I called them up,  
 21 ordered it, and almost immediately I start feeling more energy. . . . My  
 22 thought process was not cloudy. You know, I felt – and then when I started  
 23 testing the sugar levels, they dropped significantly.

24 – Exhibits B (transcript) and B1 (video),  
 25 captured 8/11/17

26 C. Second thirty-minute video

27 ANNOUNCER: Is your diabetes out of control? Are your blood  
 28 sugar numbers dangerously high? . . . You need to try the all-natural dietary

1 supplement called Nobetes. Just listen to what other diabetics are saying.

2 ON SCREEN: Mitch Darnell, MS, OSM.CTRC

3 [Mr. Darnell is standing in front of two diplomas]

4 \* \* \*

5 MITCH DARNELL: I'm all about natural products that help  
6 empower your body to heal without any side effects. . . . I was introduced to  
7 Nobetes. . . . It's an all-natural dietary supplement that helps control blood  
8 sugar within normal levels, with the added benefit it leaves you feeling  
9 better and really contributes to your overall greater health. Nobetes has 35  
10 supplements in it that can fill the nutrient shortages that diabetes causes. If  
11 you were to go out and try to buy all of these supplements at \$3 to \$4 a  
12 piece, it could cost you \$150 or more. Diabetics, this is the miracle product  
13 you've been waiting for, Nobetes.

14 \* \* \*

15 ANNOUNCER: Give Nobetes a try and see what this miracle product  
16 can do for you.

17 ON SCREEN: Free

18 Bottle

19 Processing & Handling

20 \$6.95

21 [phone number]

22 nobetes.com

23 ANNOUNCER: Get your bottle free. Just pay 6.95 processing and  
24 handling. Go to Nobetes.com or call [phone number] right now. That's  
25 [phone number] right now.

26 ON SCREEN: Free

27 Bottle

28 Processing & Handling

1 \$6.95

2 Includes continuity order, cancel anytime

3 30 day money back guarantee

4 less S&H

5 [phone number]

6 nobetes.com

7 ANNOUNCER: Go to Nobetes.com or call [phone number] right  
8 now.

9 \* \* \*

10 DARYL A.: I'm a truck driver and I actually am a real Nobetes user.  
11 . . . I take one Nobetes in the morning and I take one Nobetes in the evening,  
12 about 12 hours apart, and that alone keeps my blood sugar at a normal level.

13 . . .

14 \* \* \*

15 ANNOUNCER: The following are actual Nobetes customers that  
16 wanted to get the word out and share with you their experience with the  
17 Nobetes supplement and how it has helped them in their fight against  
18 diabetes. These are not paid actors. . . .

19 \* \* \*

20 KRYSTEN M.: When I first began taking Nobetes . . . the stress in  
21 general just had me up and down with my blood sugar level. So I was  
22 constantly feeling sick. I started taking Nobetes and my blood sugar levels  
23 stabilized [at] a normal range. And I just felt great.

24 \* \* \*

25 BOB C.: Well, when you take meds, you know, there's always that  
26 question, is it going to work . . . this works. . . . I've got the blood tests to  
27 prove it. . . . Nobetes did the job and . . . it's got me under control. . .

28 \* \* \*

1 TONY V.: . . . the cost of Nobetes is really affordable and it costs  
2 nothing to try it. . . .

3 \* \* \*

4 GUADALUPE D.: Before Nobetes I was taking insulin for 30  
5 milligrams in the morning and 30 milligrams in the afternoon. . . . So now  
6 I'm taking insulin only in the morning, 30 milligrams. I'm not taking it at  
7 nighttime.

8 \* \* \*

9 TONY V.: . . . Nobetes, you know, it saved – it have [sic] saved me  
10 from, you know, the high cost of medication.

11 \* \* \*

12 MITCH DARNELL: [standing in front of diplomas] It's important to  
13 take care of yourself, control your blood sugar within normal levels and live  
14 a healthy, vibrant life, and I believe Nobetes can help you do that.

15 ANNOUNCER: Is your diabetes out of control? Are your blood  
16 sugar numbers dangerously high? . . . Now, you may be able to reverse this.  
17 You need to try the all-natural dietary supplement called Nobetes.

18 \* \* \*

19 HENRY H.: . . . And the doctor that I go to has recommended it to  
20 her patients and she's told me it's helped many of them keeping their blood  
21 sugars in control and in check.

22 \* \* \*

23 TONY V.: And I heard about Nobetes . . . [s]o I called them up,  
24 ordered it, and almost immediately I start feeling more energy. My thought  
25 process was not cloudy.

26 \* \* \*

27 ROSE A.: . . . And with Nobetes . . . my blood sugars have been in  
28 normal range for the last two years. . . . I recommend the product to anybody

1 that has diabetes and they can't get it under control.

2 \* \* \*

3 JD H.: . . . I don't want to go blind. I don't want to go get – go into a  
4 coma. I don't want to have a stroke. I want to be around for my kids. . . .  
5 Nobetes is changing my life.

6 \* \* \*

7 EDDIE J.: Nobetes is really terrific for me. I've gone to quite a few  
8 doctors using different types of medications and the fluctuation was just  
9 drastic. It was just a disaster. And when I did take the Nobetes . . . it  
10 worked for me.

11 \* \* \*

12 TONY V.: . . . I strongly urge you to try the product. It's free and you  
13 won't regret it.

14 \* \* \*

15 ROBERT B.: . . . I still eat the same old crap I always did. But once I  
16 eat all that crap, my sugar will go up. But when I take my Nobetes after  
17 dinner, by evening, I'm right back where I was when I started.

18 \* \* \*

19 JOHN S.: . . . My sugar level has been kept at a normal range.

20 \* \* \*

21 VIRGINIA: . . . [I]f you're like me and you're having trouble keeping  
22 your sugar numbers down . . . I've used lots of different products that never  
23 worked and so I became very discouraged until I got the Nobetes. And  
24 something is finally working and it's wonderful.

25 \* \* \*

26 EDDIE J.: . . . when my numbers were running 280, 270, it was  
27 pretty scary. To know that they're down now . . . I love the Nobetes.

28 \* \* \*

1 MITCH DARNELL: [standing in front of diplomas] Diabetics, this  
2 is the miracle product you've been waiting for, Nobetes.

3 – Exhibits C (transcript) and C1 (video),  
4 Television and YouTube ad, captured 6/7/2017

5 18. According to the instructions in the advertising, consumers can order  
6 Nobetes by visiting the nobetes.com website, or by calling the number presented  
7 on the screen. Consumers who visit the website for the purpose of ordering the  
8 free trial, however, encounter a message directing them that they must telephone  
9 the company to do so.

10 19. In many instances, when consumers call to ask about the product,  
11 Defendants' inbound telemarketer makes additional claims for the product. In one  
12 instance, for example, the telemarketer stated that the "promotion we have today,  
13 sir, is a natural supplement that will help you regulate the sugar levels in your  
14 blood." He then advised that "this product has to be taken one, two, or three times  
15 a day, depending on how high are your sugar levels right now," and then asked for  
16 the caller's sugar level: "Are you in the 200's, 300's?" When the caller responded  
17 that he was calling for his father, whose numbers were in the "200's," the  
18 telemarketer recommended that his father take Nobetes twice a day, thirty minutes  
19 before lunch and then an hour after dinner or before going to bed. The  
20 telemarketer listed many of the product's ingredients and stated that "altogether,  
21 these will help . . . with high sugar levels."

22 20. In many instances, when consumers call to ask about the product, the  
23 Defendants' inbound telemarketer states that the current promotion is a trial offer  
24 whereby the consumer will pay \$6.95 for shipping and handling for one 30-pill  
25 bottle of Nobetes. The telemarketer then asks whether the caller would like to pay  
26 with a "Visa or Master Card?" After receiving the billing information, the  
27 telemarketer advises the consumer that if the product works, "then you can call us  
28 back . . . to reorder another bottle."

1           21. Shortly thereafter, Defendants bill \$6.95 to the consumer's card and  
2 ship them a 30-pill bottle of Nobetes.

3           22. In many instances, one month after Defendants charge the consumer  
4 for the trial offer, they automatically ship a second 30-pill bottle of product to the  
5 consumer, and charge \$50.60 to the consumer's credit card. Every month  
6 thereafter, Defendants ship another 30-pill bottle of product, and charge the  
7 consumer's card an additional \$50.60, until the consumer takes affirmative action  
8 to cancel the order and request a refund.

9           23. In many instances, Defendants do not advise the trial order callers that  
10 Defendants will enroll them in a continuity program, and use the consumer's  
11 billing information for continuity shipments; do not advise callers how much they  
12 will be charged for continuity shipments or when such charges will be assessed;  
13 and do not state what the consumer needs to do to avoid such a charge. At no time  
14 during the call do Defendants seek or obtain the express, informed consent of the  
15 consumer to charges for continuity shipments.

16                   **DEFENDANTS' VIOLATIONS OF THE FTC ACT**

17           24. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits "unfair or  
18 deceptive acts or practices in or affecting commerce."

19           25. Misrepresentations or deceptive omissions of material fact constitute  
20 deceptive acts or practices prohibited by Section 5(a) of the FTC Act. An act or  
21 practice is unfair under Section 5 if it causes or is likely to cause substantial injury  
22 to consumers which is not reasonably avoidable by consumers themselves and not  
23 outweighed by countervailing benefits to consumers or to competition. 15 U.S.C.  
24 § 45(n).

25           26. Section 12(a) of the FTC Act, 15 U.S.C. § 52(a), prohibits the  
26 dissemination of any false advertisement in or affecting commerce for the purpose  
27 of inducing, or which is likely to induce, the purchase of food, drugs, devices,  
28 services, or cosmetics. For the purposes of Section 12 of the FTC Act, Nobetes is

1 a “food” or “drug” as “food” and “drug” are defined in Sections 15(b) and (c) of  
2 the FTC Act, 15 U.S.C. § 55(b) and (c).

3 **COUNT I: FALSE OR UNSUBSTANTIATED DIABETES CLAIMS**

4 27. Through the means described in Paragraphs 17 and 19, Defendants  
5 have represented, directly or indirectly, expressly or by implication, that:

- 6 A. Nobetes treats diabetes;  
7 B. Nobetes reduces high blood sugar;  
8 C. Nobetes reduces or eliminates the need for blood sugar  
9 medications such as insulin;  
10 D. Nobetes keeps blood sugar within normal levels; and  
11 E. Nobetes benefits diabetics by replenishing nutrient deficiencies  
12 caused by diabetes.

13 28. The representations set forth in Paragraph 27 are false or misleading,  
14 or were not substantiated, at the time the representations were made.

15 29. Therefore, the making of the representations as set forth in Paragraph  
16 27 of this Complaint constitutes a deceptive act or practice and the making of false  
17 advertisements, in or affecting commerce, in violation of Sections 5(a) and 12 of  
18 the FTC Act, 15 U.S.C. §§ 45(a) and 52.

19 **COUNT II: FALSE CLAIM REGARDING ENDORSER DARNELL**

20 30. Through the means described in Paragraph 17, Defendants have  
21 represented, directly or indirectly, expressly or by implication, that endorser Mitch  
22 Darnell is a qualified scientific or medical expert in blood sugar regulation and  
23 diabetes treatment.

24 31. In truth and in fact, endorser Mitch Darnell is not a qualified scientific  
25 or medical expert in blood sugar regulation or diabetes treatment. Mr. Darnell is  
26 an actor.

27 32. Therefore, the making of the representations as set forth in Paragraph  
28 30 of this Complaint constitutes a deceptive act or practice and the making of false

1 advertisements, in or affecting commerce, in violation of Sections 5(a) and 12 of  
2 the FTC Act, 15 U.S.C. §§ 45(a) and 52.

3 **COUNT III: FAILURE TO DISCLOSE**

4 **MATERIAL CONNECTIONS WITH ENDORSERS**

5 33. Through the means described in Paragraph 17, Defendants have  
6 represented, expressly or by implication, that the endorsers appearing in  
7 advertising recommend Nobetes.

8 34. Defendants have failed to disclose that Defendants provided many of  
9 the endorsers with free product.

10 35. This additional information would be material to consumers in their  
11 evaluation of the endorsements in connection with their purchase or use of  
12 Nobetes.

13 36. Defendants' failure to disclose the material information described in  
14 Paragraph 34, in light of the representation made in Paragraph 33, constitutes a  
15 deceptive act or practice and the making of false advertisements, in or affecting  
16 commerce, in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a)  
17 and 52.

18 **COUNT IV: FAILURE TO DISCLOSE**

19 **MATERIAL TERMS OF OFFER**

20 37. Through the means described in Paragraphs 17 and 20, Defendants  
21 have represented, directly or indirectly, expressly or by implication, that consumers  
22 can obtain a "free trial" of Nobetes by paying \$6.95 for shipping and handling.

23 38. In truth and in fact, in numerous instances in which Defendants have  
24 made the representation set forth in Paragraph 37, Defendants have failed to  
25 disclose, or disclose adequately, to consumers, material terms and conditions of  
26 their offer, including:

27 A. That Defendants will automatically enroll consumers in a  
28 negative option continuity plan with additional charges;

1 B. The cost of the continuity plan, and the frequency and duration  
2 of the recurring charges; and

3 C. The date and the means by which consumers must cancel to  
4 avoid additional charges.

5 39. Defendants' failure to disclose, or to disclose adequately, the material  
6 information described in Paragraph 38, in light of the representation made in  
7 Paragraph 37, constitutes a deceptive act or practice in violation of Section 5(a) of  
8 the FTC Act, 15 U.S.C. § 45(a).

9  
10 **COUNT V: UNFAIRLY CHARGING CONSUMERS WITHOUT**  
11 **AUTHORIZATION**

12 40. In numerous instances, Defendants have caused charges to be  
13 submitted for payment to the credit cards of consumers without the express  
14 informed consent of consumers.

15 41. Defendants' practices caused or are likely to have caused substantial  
16 injury to consumers that consumers could not reasonably avoid themselves and that  
17 is not outweighed by countervailing benefits to consumers or competition.

18 42. Therefore, Defendants' practices as described in Paragraphs 17, 20,  
19 22, and 23, above, constitute unfair acts or practices in violation of Section 5 of the  
20 FTC Act, 15 U.S.C. §§ 45(a) and 45(n).

21 **CONSUMER INJURY**

22 43. Consumers are likely to have suffered substantial injury as a result of  
23 Defendants' violations of the FTC Act. In addition, Defendants have been unjustly  
24 enriched as a result of their unlawful acts or practices. Absent injunctive relief by  
25 this Court, Defendants are likely to continue to injure consumers, reap unjust  
26 enrichment, and harm the public interest.

27 **PRAYER FOR RELIEF**

28 Wherefore, Plaintiff FTC, pursuant to Section 13(b) of the FTC Act, 15

1 U.S.C. § 53(b), and the Court's own equitable powers, requests that the Court:

2 A. Enter a permanent injunction to prevent future violations of the FTC  
3 Act by Defendants;


4 B. Award such relief as the Court finds necessary to redress injury to  
5 consumers resulting from Defendants' violations of the FTC Act, including but not  
6 limited to, rescission or reformation of contracts, restitution, the refund of monies  
7 paid, and the disgorgement of ill-gotten monies; and,

8 C. Award Plaintiff the costs of bringing this action, as well as such other  
9 and additional relief as the Court may determine to be just and proper.

10 Respectfully submitted,

11 ALDEN F. ABBOTT  
12 General Counsel

13  
14 Dated: December 3, 2018

  
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15 Janet Evans  
16 DC Bar No. 358467; jevans@ftc.gov  
17 600 Pennsylvania Ave., N.W.  
18 Mail Drop CC-10528  
19 Washington, D.C. 20580  
20 Tel: (202) 326-2125  
21 Fax: (202) 326-3259

22 Robert Quigley (Local Counsel)  
23 CA Bar No. 302879; rquigley@ftc.gov  
24 10990 Wilshire Boulevard, Suite 400  
25 Los Angeles, California 90024  
26 Tel: (310) 824-4300  
27 Fax: (310) 824-4380

28 Attorneys for Plaintiff  
FEDERAL TRADE COMMISSION